



November 2, 2000

Mr. Vic Ramirez
Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

OR2000-4283

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 141154.

The Lower Colorado River Authority (the "LCRA") received a request for the "short list" of proposals submitted to LCRA by six named firms for the development of an internet and e-commerce strategy for LCRA's wholesale energy services division. LCRA takes no position and makes no arguments against the release of the information, but states that the responsive information may be excepted from disclosure by sections 552.101, 552.110, 552.113, or 552.131 of the Government Code.

We note at the outset that LCRA did not submit any of the responsive information for our review. *See* Gov't Code § 552.301(e)(1)(D). Because LCRA did not comply with all of the requirements of section 552.301 of the Government Code, the information responsive to the request is presumed to be subject to required public disclosure, which presumption can be overcome only by a compelling reason to withhold the information. Gov't Code § 552.302. This office has long held, however, that the privacy or proprietary interests of a third party may constitute a compelling reason sufficient to overcome the section 552.302 presumption of openness. *See, e.g.,* Open Records Decision Nos. 552 (1990), 473 (1987), 150 (1977), 71 (1975).

In compliance with section 552.305 of the Act, LCRA notified the six named firms of the request by a letter dated September 8, 2000. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances).

Four of the named firms (Harte Hanks, PROXICOM, Information Engineering Corp., and NetManage, Inc.) did not respond to the notice; therefore, we have no basis to conclude that any of their information is excepted from disclosure. *See* Gov't Code § 552.110(b) (to

prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Future Protocol, Inc. ("FPI") and Navigant Consulting, Inc. ("Navigant") each submitted comments to this office in response to the notice.

FPI argues that portions of its information are excepted from disclosure by section 552.110 of the Government Code. However, because LCRA failed to submit FPI's information for our review, we are unable to evaluate the merits of FPI's arguments and assertions. We therefore have no basis for concluding that any of FPI's information is excepted from required disclosure by section 552.110 of the Government Code, and we have no choice but to order the information released pursuant to section 552.302 of the Government Code.

Although LCRA also failed to submit Navigant's information for our review, Navigant enclosed with its comments to this office copies of its information. However, Navigant's sole assertion is that portions of its information are excepted from disclosure by section 552.104 of the Government Code. *See* Gov't Code § 552.104 (excepting information that, if released, would give advantage to a competitor or bidder). The purpose of section 552.104 is to protect the interests of the governmental body, not that of private parties that submit information to the governmental body. *See* Open Records Decision No. 592 at 8-9 (1991). Therefore, section 552.104 is a discretionary exception under the Act that does not constitute a compelling reason to withhold information sufficient to overcome the section 552.302 presumption of openness. Because Navigant asserts no other exception for the withholding of its information, there has been no compelling reason demonstrated for the withholding of Navigant's information.

In summary, we conclude that the information responsive to the request must be released to the requestor pursuant to section 552.302 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

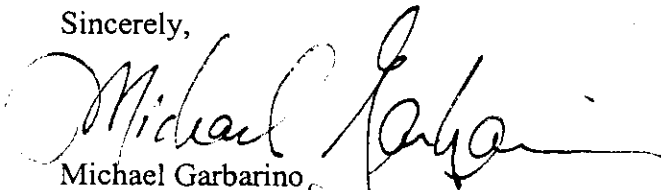
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

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